

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
EASTERN DIVISION

EVERETTE HATCHER, JR.,

Plaintiff

V.

NO. 1:94CV212-S-D

WESLEY BARRY COWARD, ET AL,

Defendants

**MEMORANDUM OPINION**

This matter is before the court sua sponte, for consideration of dismissal of this case. Plaintiff, Everette Hatcher, Jr., currently housed at the Federal Medical Center, Fort Worth, Texas, files this complaint pursuant to 42 U.S.C. §1983 against Wesley Barry Coward, of the Louisville, Mississippi Drug Task Force; Timothy A. Woods, an investigator for the Mississippi Bureau of Narcotics; and Danny Murphy, a confidential informant for the Louisville, Mississippi, Narcotics Drug Task Force. Plaintiff seeks as relief that he be awarded monetary damages for violation of his civil rights, for infliction of emotional distress, and for punitive damages; for prejudgment and post-judgment interest; and for court costs and expenses in this action.

Plaintiff states that defendant Coward filed a criminal complaint against him in state court in Attala County, Mississippi, for the sale of LSD to defendants Woods and Murphy. Plaintiff was indicted for this offense by the Circuit Court of Attala County.

He further states that the defendants transferred the case to the Federal District Court of Northern Mississippi, where plaintiff was indicted on January 31, 1992, for various drug offenses. The state charges were then dismissed.

Plaintiff also contends that all defendants committed perjury at the grand jury proceedings before the state and federal courts.

As a result of the actions of the defendants, plaintiff argues that he is being held in false imprisonment.

After carefully considering the contents of the pro se complaint and giving it the liberal construction required by Haines v. Kerner, 404 U.S. 519 (1972), this court has come to the following conclusion.

In Jackson v. Torres, 720 F.2d 877, 879 (5th Cir. 1983), the court held that any challenge to the fact or duration of a prisoner's confinement is properly treated as a habeas corpus matter, whereas challenges to conditions of confinement may proceed under Section 1983. Johnson v. Hardy, 601 F.2d 172, 174 (5th Cir. 1979). The relief sought by the prisoner or the label he places upon the action is not the governing factor.

Clearly, the plaintiff is challenging the fact of his confinement and not the conditions of confinement. Consequently, this action will be treated as a habeas corpus matter.

Although the plaintiff does not specifically state in his pleadings what he was charged with, it is apparent that he was convicted of drug charges in Federal District Court. It is clear

that drug offenses may be tried in either federal or state court. U.S. v. Schrenzel, 462 F.2d 984 (1972). It is not error to refuse to transfer the prosecution to state court even if the defendant had certain rights in state court, such as the right to take depositions of law enforcement officers, which were not available in federal court. Id. at 772.

Pursuant to the United States Constitution Article III, §2, clause 1, federal courts have jurisdiction in cases arising under the Constitution and laws of the United States. The district courts have jurisdiction of offenses against the laws of the United States. Section 3231 of Title 818 F.Supp. 280 (E.D. MO 1993). A person who could have been tried by either state or federal authorities has no right to a say as to which, if either, would try him first. See Caton v. U.S., 407 F.2d 367 (8th Cir. 1969), cert. denied 395 U.S. 984 (1969). Consequently, petitioner's claim is without merit.

A final judgment in accordance with this opinion will be entered.

THIS the \_\_\_\_\_ day of \_\_\_\_\_, 1994.

---

CHIEF JUDGE